

SCOTT N. SCHOOLS, SC SBN 9990
 United States Attorney
 JOANN M. SWANSON, CSBN 88143
 Assistant United States Attorney
 Chief, Civil Division
 ILA C. DEISS, NY SBN 3052909
 Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
 San Francisco, California 94102
 Telephone: (415) 436-7124
 FAX: (415) 436-7169

Attorneys for Defendants

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

VAN HUNG VI,

Petitioner,

v.

NANCY ALCANTAR, Field Office Director,
 United States Immigration and Customs Services
 (USICE); JANET L. MYERS, Assistant Secretary;
 MICHAEL CHERTOFF, Secretary,
 Department of Homeland Security,

Defendants.

No. C 07-5527 CW

**RESPONSE TO THIS COURT'S
 DECEMBER 18, 2007 ORDER TO SHOW
 CAUSE**

On February 22, 2007, Petitioner Van Hung Vi, a native and citizen of Vietnam, who is the subject of a final order of removal, was indicted on a federal drug charges in the Eastern District of California. *See* Verified Petition for Writ of Mandate (Petition) at 4; Exh. A. The United States Attorney's Office for the Eastern District of California sought remand and Petitioner is currently detained in the Sacramento County Jail. *See* Petition at 4.

On October 30, 2007, Petitioner filed this petition under 28 U.S.C. § 2241, seeking release

1 from detention.¹ See Petition at 6. On December 18, 2007, the Court issued an Order to Show
 2 Cause why the petition should not be granted. Respondents hereby respond to the Court's
 3 December 18, 2007 order to show cause. This petition should be dismissed for lack of
 4 jurisdiction.

5 To the extent Petitioner is challenging his final order of removal, this Court lacks jurisdiction
 6 to consider those claims. *See* Immigration and Nationality Act (INA) § 242(a)(5), 8 U.S.C. §
 7 1252(a)(5).²

8 To the extent Petitioner is challenging his custody in the Sacramento Jail pursuant to a criminal
 9 indictment issued by the Eastern District of California, the petition must be in the district in which
 10 a prisoner is incarcerated. *See Hernandez v. Campbell*, 204 F.3d 861, 864 (9th Cir.1999).

11 To the extent Petitioner is challenging Respondents' lodging of an immigration detainer with
 12 the Sacramento County Jail, a petitioner is not considered in custody for purposes of a 8 U.S.C. §
 13 2241 petition by virtue of Immigration and Customs Enforcement's decision to lodge a detainer
 14 with the prison where he is incarcerated. *See Garcia-Echaverria v. United States*, 376 F.3d 507,
 15 510-11 (6th Cir. 2004); *Zolicoffer v. United States Dep't of Justice*, 315 F.3d 538, 541 (5th Cir.
 16 2003); *Orozco v. U.S.I.N.S.*, 911 F.2d 539, 541 (11th Cir.1990).³

17 Therefore, Petitioner has not established a basis for jurisdiction in this Court and the petition
 18 should be dismissed.

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 21 ¹This Court may entertain a petition for a writ of habeas corpus from a person claiming to
 22 be "in custody in violation of the Constitution or laws or treaties of the United States." 28
 U.S.C. § 2241(c)(3).

23
 24 ² 8 U.S.C. 1252(a)(5) reads: "Notwithstanding any other provision of law (statutory or
 25 nonstatutory), including section 2241 of title 28, United States Code, or any other habeas
 26 provision, and sections 1361 and 1651 of such title, a petition for review filed with an
 appropriate court of appeals in accordance with this section shall be the sole and exclusive means
 for judicial review of an order of removal entered or issued under any provision of this Act . . ."

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 28 ³Any challenge to the validity of the immigration detainer is not reviewable by this Court.
See 8 U.S.C. § 1252(g).

1 Dated: December 27, 2007

Respectfully submitted,

2 SCOTT N. SCHOOLS
3 United States Attorney

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5 /s/
6 ILA C. DEISS
7 Assistant United States Attorney
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